

OSWER POLICY DIRECTIVE NO.

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NATIONAL CRITERIA  
FOR A  
QUALITY HAZARDOUS WASTE MANAGEMENT PROGRAM

Revised June 1986

## NATIONAL CRITERIA FOR A QUALITY RCRA PROGRAM

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## PREFACE

In May 1984, EPA and the Association of State and Territorial Solid Waste Management Officials published the "Interim National Criteria for a Quality Hazardous Waste Management Program under RCRA". The Quality Criteria set basic goals and performance expectations for the States and EPA in managing the RCRA program. Since their issuance, the Quality Criteria have received extensive application in the planning and overseeing of hazardous waste programs in both the Regions and the States. Of particular importance was their use in defining program capabilities as part of the authorization process, and their incorporation into the State grant work programs as performance benchmarks.

The October 1985 revisions to the Quality Criteria were restricted to changes needed to provide consistency with the Hazardous and Solid Waste Amendments of 1984 (HSWA) and revised national policies. The October 1985 revisions added criteria for facility management planning, joint permit issuance, and expanded public involvement in permitting. These revisions also deleted or revised timeframes for permit processing and added or clarified criteria on inspections and enforcement.

In the current revision to the Quality Criteria, we considered more comprehensive changes to reflect additional HSWA requirements and revised national policies. These revisions include:

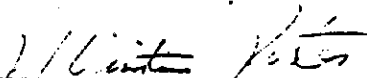
- adding criteria for closures;
- adding criteria for corrective action;
- reformatting the facility management planning criteria as a goal under management rather than a separate section;
- adding performance measurements; and,
- clarifying and editing various items.

Some of the comments received related to aspects of the Enforcement Program Criteria which were changed in order for the document to conform with the Enforcement Response Policy (December 21, 1984). Commenters were concerned with the definition of violation categories, the timeframes within which the violations are to be addressed, and the level and type of enforcement response expected. These and other related issues are being addressed by a State/EPA workgroup, and the Enforcement Response Policy (ERP) will be revised in light of implementation experience. The Enforcement Criteria will be revised to reflect any changes to the ERP.

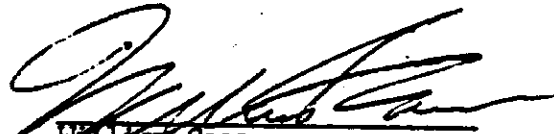
The commenters emphasized their concern with how the Quality Criteria reflected the ERP's provisions on assessment of penalties. The Quality Criteria states that penalties are to be assessed in accordance with the ERP, which describes appropriate responses and timeframes for taking action against persons who violate RCRA requirements. One issue being examined is the scope of the definition of High Priority Violators (violators who should always be assessed penalties within a suitable timeframe). Although the existing definition of High Priority Violators may be refined to some extent, there will always be a defined group of violators for whom penalties are appropriate. Assessment of penalties is essential to developing and maintaining an effective RCRA enforcement program. By taking strong action against serious violators, we ensure that others will be deterred from violating RCRA requirements.

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These revisions were drafted jointly by EPA and the Association of State and Territorial Solid Waste Management Officials. We appreciate the assistance of everyone who participated in this effort. Comments on how the Quality Criteria may be improved are welcome at any time.



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Date

7/14/86

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8/19/86

## PART I

INTRODUCTION: PURPOSE, SCOPE, AND USE OF THE CRITERIAPurpose & Scope

This document establishes national criteria for planning and overseeing a quality hazardous waste management program under the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The same criteria are to be used for evaluating both authorized State performance and Regional performance in non-authorized States. The purpose of the document is:

- ° to clarify program goals, objectives, performance expectations, and performance measurements to ensure that EPA and the States have a common understanding of what must be done to effectively implement RCRA; and
- ° to outline general principles to describe how EPA and the States should respond when the criteria are either not met or are exceeded.

The development of useful and relevant performance criteria for RCRA is an evolving process, reflecting our growing experience in program implementation. The Criteria have been revised twice since originally published in May 1984. These revisions reflect Congressionally-mandated changes to the RCRA program, new Agency policies and directives, and EPA/State experience in using the Criteria. The Criteria will continue to be revised as necessary, although future changes should be more in the nature of fine tuning rather than major additions or deletions.

This document and related guidance materials implement for RCRA the Agency's policy on delegation and oversight.

Use of the Criteria

The criteria influence a wide range of management and evaluation activities in EPA Headquarters, the Regions, and the States. The criteria will be used:

- ° to provide the multi-year performance expectations for defining annual commitments contained in the Agency Operating Guidance and the RCRA Implementation Plan;
- ° to define consistent evaluation protocols for developing State grant work programs and overseeing the program on an on-going basis;
- ° to provide a systematic approach which the Regions and States may use during the State authorization process to support the assessment of program capability and to reach agreement on the steps necessary to build and sustain a quality program over time;
- ° to set the national criteria for determining when direct EPA actions (e.g., Federal enforcement, adding Federal permit conditions) are appropriate;

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- ° to identify areas where assistance and training are needed to build... and sustain a quality program;
- ° to assist in determining State and EPA resource needs; and,
- ° to identify those measures needed by EPA to oversee implementation of RCRA by authorized State and Regions.

## PART II

CRITERIA FOR A QUALITY RCRA PROGRAMCharacteristics of a Quality RCRA Program

Subtitle C of the Resource Conservation and Recovery Act (RCRA) as amended by HSWA, provides the statutory authority for the hazardous waste management program. In general, a fully implemented quality program is one which:

- ° knows the status of its regulated community, communicates program progress effectively to the public, and has taken steps to ensure that all handlers covered by the regulations are identified and brought into the RCRA system;
- ° has made final determinations (issued or denied permits, approved closures) for all existing treatment, storage, and disposal (TSD) facilities and has procedures to promptly address new facilities and permit revisions;
- ° effectively implements corrective action through the permitting and enforcement process; and,
- ° demonstrates improving compliance rates for all handlers, with all violators returned to compliance as quickly and effectively as possible through a vigorous enforcement program.

Use of this Document

The criteria in this document are designed to bring the program closer to achieving each of these characteristics. The criteria define the benchmarks and expectations of the EPA Regions and States. The following assumptions underlie the definition and use of the RCRA program quality criteria.

- ° The criteria apply to the fully authorized State program, including the more stringent provisions that are authorized.
- ° The performance expectations in the criteria are not explicitly constrained by existing resources. They reflect the needs for a quality RCRA program. The annual operating guidance and the RCRA Implementation Plan set priorities among the national criteria within the resource levels available to the program in any given year.
- ° The performance expectations set the basic multi-year goals for the RCRA program. They may be expanded upon by the priorities set in the annual RCRA Implementation Plan (RIP) (e.g., grant funds to be allocated to training or percentage of handlers to be inspected in a given year), but they should not conflict with requirements in the RIP. All States are expected to meet these performance expectations except to the extent they are modified by the State/EPA memorandum of agreement or the State grant work program. These criteria were chosen because they represent the critical needs for a quality program; therefore, deviations from these criteria should be minimal and well justified.

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Description of the Performance Criteria

The performance criteria are organized to address five of the major performance areas of the RCRA program: enforcement, permitting, closures, corrective action, and program management. The program management criteria are split into three groups to separately identify (1) those criteria related to activities of the authorized State (or Region, in nonauthorized States); (2) those criteria related to the oversight Agency; and, (3) those criteria related to a facility management planning process. In this way, the management criteria capture the mutual dependence of EPA and the authorized States for ensuring a quality program.

The performance criteria do not include national expectations for certain measures (e.g., the compliance rate). This is for one of two reasons: the specific levels are dependent on annual priorities; or our experience to date provides no clear, quantifiable preference. For some of these measures, annual targets may be included in the annual Agency operating guidance or RIP. For others, the performance expectations will evolve over time as the RCRA program matures and more performance information becomes available.

The criteria provide four levels of information for each RCRA goal.

- ° Key Questions. The questions represent the key areas to describe a quality RCRA program for permitting, enforcement, closure, corrective action, and management.
- ° Performance Expectations. The performance expectations (where precisely defined) provide the national benchmarks to assess performance of the program for each of the key questions. Note that when the performance expectation is in terms of days, it refers to calendar days, not work days.
- ° Oversight Tools. The oversight tools are the principal source of program information used to track progress against the criteria. The oversight tools available to the program include program reviews (e.g., HQ program reviews of Regions, mid- and end-of-year reviews of States), monthly monitoring (including use of reporting information), file reviews, administrative record reviews, and review of individual State actions (e.g., oversight inspections, permit reviews, compliance with various State/EPA agreements and/or State-specific strategies, NOD reviews).
- ° Performance Measurements. The performance measurements were developed to establish the standards by which the performance expectations for each criteria will be measured. When reviewing State performance against one of these criteria, judgment should be based on the specific requirements in the State grant or other signed State/EPA agreement. To the extent practicable, those documents must reflect the standards in these criteria, although some deviation may be allowed on a case-by-case basis. Also, when evaluating a performance expectation with a yes/no performance measurement, "yes" should be used only for those items that the State/ Region adequately addressed. "No" should be used to indicate items inadequately addressed or not addressed.



# ENFORCEMENT PROGRAM CRITERIA

GOAL: OPERATE AN ENFORCEMENT PROGRAM THAT ACHIEVES AN IMPROVING LEVEL OF COMPLIANCE TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT.

KEY QUESTIONS	PERFORMANCE EXPECTATIONS	PERFORMANCE MEASUREMENT
1. Is the multi-year compliance monitoring strategy <sup>1</sup> consistent with the national enforcement strategy <sup>2</sup> ?	A. Strategy is written and updated annually as necessary. B. The strategy includes: 1) a plan to inspect all ground-water monitoring facilities at least each year, with comprehensive ground-water monitoring evaluations (CMEs) as appropriate. 2) a minimum two-year timeframe for inspections of treatment, storage, and disposal facilities (TSDF's) and a plan for inspecting generators and transporters, with priority given to those that pose the greatest public health or environmental threat. 3) procedures for completing record reviews of all handlers. 4) procedures to evaluate and verify that facilities have closed in accordance with approved closure/post-closure plans and that requests for withdrawal are valid. 5) procedures to inspect all facilities in conjunction with the permit application requests and to otherwise support the permit process. 6) procedures to identify non-notifiers and handlers operating without permits or manifests.	A. Yes/No  1) Yes/No 2) Yes/No 3) Yes/No 4) Yes/No 5) Yes/No 6) Yes/No

## OVERSIGHT TOOLS

- o State/EPA Enforcement Agreement
- o Program reviews\*
- o State grant work program
- o MOA

1. See Lee Thomas memo of June 12, 1984.
  2. National enforcement strategy is embodied in key policy documents such as the RCRA Implementation Plan, Enforcement Response Policy, and other Agency as well as program office documents.
- \* Includes HQ program reviews of Regions and Regional quarterly, mid- and end-of-year reviews of States.

KEY QUESTIONS	PERFORMANCE EXPECTATIONS	PERFORMANCE MEASUREMENTS
Question 1 (Continued)	7) procedures to coordinate with other Agencies charged with responsibility for regulating transporters.	7) Yes/No
	8) procedures for taking an enforcement response for every instance of known non compliance.	8) Yes/No
2. Are inspections and record reviews conducted in accordance with the compliance monitoring strategy?	A. Inspection of 100% of ground-water monitoring facilities each year, with CMEs as appropriate.	A. No. of GWM facilities No. of CEI's and CME's completed
	B. Inspection of at least 50% of treatment, storage and disposal facilities (TSDF's) and a percentage of generators and transporters each year. (Per HSWA, all TSDF's must be inspected every two years, and EPA must inspect each year all TSDF's owned or operated by Federal, State or local governments).	B. No. of TSDF's No. of generators and transporters No. of CEI's completed
<u>OVERSIGHT TOOLS</u>	C. Inspection of RCRA TSDF's receiving CERCLA wastes in accordance with EPA's CERCLA Off-Site policy.	C. Facilities identified in State grant
o Compliance Monitoring and Enforcement Log (HWDMS)	D. Are closing facilities inspected to ensure that all follow approved plans and that all withdrawals are valid.	D. No. of TSDF's that submitted a notification to close No. of CEI's at closing facilities
o Facility Status Sheet (HWDMS)	E. Verifications (including record reviews and inspections) are performed within 30 days of the final compliance date at all facilities in violation and scheduled to return to compliance.	E. Projected compliance date Actual compliance date
o Program reviews	F. Number and types of handlers (i.e., generators, transporters, TSDF's) inspected meets quarterly commitments.	F. Projected CEI's and CME's Actual CEI's and CME's
o SPMS		

KEY QUESTIONS	PERFORMANCE EXPECTATIONS	PERFORMANCE MEASUREMENTS
Question 2 (Continued)	G. Number of record reviews (closure/post-closure plans, financial assurances) conducted meets quarterly commitments.	G. Nb. of record reviews committed to Actual record reviews
3. Are inspections and record reviews thorough and properly documented?	A. Inspection checklists are complete and accurate. B. Files are maintained and readily accessible; violations are well documented.	A. Yes/No B. Yes/No
<u>OVERSIGHT TOOLS</u>	C. Comprehensive ground-water monitoring evaluations (CMEs) evaluate the adequacy of detection and assessment ground-water monitoring systems in accordance with the <u>RCRA GWM Technical Enforcement Guidance</u> (Draft August 1985).	C. Yes/No
o File reviews	D. Sampling quality assurance/quality control procedures are followed.	D. Yes/No
o Oversight inspections	E. All violations at inspected handlers are identified and properly classified (high priority, Class I or II) per the national Enforcement Response Policy.	E. Yes/No
o Program reviews		
o Copies of inspection checklists and reports for selected GWM facilities		
o TEGD, APP. A Evaluation Worksheets		
o Compliance Monitoring and Enforcement Log (HWMS)		

KEY QUESTIONS	PERFORMANCE EXPECTATIONS	PERFORMANCE MEASUREMENTS
4. Are enforcement actions timely and appropriate? (See timeframe in Appendix A.)*	A. For high priority violators: ** 1) If the State has administrative penalty authority, a formal complaint is to be issued within <u>90</u> days after violation discovery in accordance with the Enforcement Response Policy.*** Steps 4, 5, and 6 outlined under 4.B. below will then be followed if escalated action is necessary.	A. 1) Date of inspection Date of determination of violation Date of formal enforcement action
<u>OVERSIGHT TOOLS</u>		
<ul style="list-style-type: none"> <li>o Compliance Monitoring and Enforcement Log (HWDMS)</li> <li>o Program reviews</li> <li>o Copies of complaints/orders for all GM facilities</li> <li>o File reviews</li> <li>o SFMS</li> </ul>		

\* The timeliness criteria are national performance expectations. They may be more stringent to reflect individual Regional/State requirements or they may be adjusted to incorporate unique State authorities and, to a more limited extent, processes. The specific criteria used in each State must be included in the annual State grant work program or the MOA. Note that emergencies (such as imminent and substantial endangerment situations) should be acted on immediately and not be limited by these criteria.

\*\* A high priority violator is a handler who has one or more Class I violations of the ground-water, closure/post-closure, and financial responsibility requirements, or who poses a substantial likelihood of exposure to hazardous waste or has caused actual exposure, has realized a substantial economic benefit as a result of non-compliance, or is a chronic or recalcitrant violator (including a handler who is violating schedules in an order or decree). The Enforcement Response Policy issued December 21, 1984, provides an operational definition for Region and State use.

\*\*\* The average time for the date of discovery from the date of inspection or record review is 45 days. In many cases, a lesser timeframe is more suitable, for example where the inspector is also the enforcement official. Where there are more complicated situations, for example where chemical analysis of samples is required, time from the date of inspection to the date of violation determination may be greater.

KEY QUESTIONS	PERFORMANCE EXPECTATIONS	PERFORMANCE MEASUREMENTS
Question 4 (Continued)	<p>2) If the State lacks administrative penalty authority, the case should be referred to the appropriate civil litigation authority, e.g., State Attorney General, District Attorney, etc., within <u>90</u> days from the discovery of violation. Steps 5 and 6 outlined under 4.B. below will then be followed if escalated action is necessary.</p> <p>B. For Other Violators with Class I Violations: *</p> <p>1) An initial enforcement action (e.g., warning letter, notice of violation, or equivalent action) is taken within <u>30</u> days of violation discovery.</p> <p>2) Decision is made to escalate action (e.g., administrative complaint/order, civil referral) with <u>90</u> days of the initial enforcement action for handlers not returned to compliance or on an agreed upon compliance schedule.** (More than one action, such as a warning letter, NOV or equivalent, may be taken within this time period.)</p> <p>3) If a decision is made to issue a formal administrative complaint, it should be issued within <u>60</u> days after the decision to escalate. (Note that pre-hearing negotiations should not generally continue beyond <u>90</u> days from issuance of the initial complaint.)</p>	<p>2) Date of inspection Date of determination of violation Date of referral</p> <p>1) Date of inspection Date of initial enforcement action</p> <p>2) Return to compliance date Date of escalation decision***</p> <p>3) Date of complaint issued</p>

\* At its option, an EPA Region or State may choose to bypass less formal enforcement actions and go immediately to a complaint (AO) or civil referral. The criteria in Part A above should be followed in such cases. (See page 7.)

\*\* Handlers on a compliance schedule will be monitored to ensure conformance with the schedule. Escalated enforcement action will be taken if the handler is not in compliance within 30 days of the compliance schedule.

\*\*\* The date of the escalation decision may not be documented.

KEY QUESTIONS	PERFORMANCE EXPECTATIONS	PERFORMANCE MEASUREMENTS
Question 4 (Continued)	<p>4) Decision is made to refer case to appropriate civil litigation authority after the administrative process is exhausted for handlers not in compliance, not on an agreed upon compliance schedule, or for which no administrative hearing has been scheduled.*</p> <p>5) Case is referred to civil litigation authority within <u>90</u> days after decision to refer case.</p> <p>6) Civil litigation authority files the case within <u>60</u> days of referral.</p> <p>C. Appropriate enforcement actions:</p> <p>1) Penalties are assessed against all high priority violators and, where necessary, against other Class I violators in accordance with the Enforcement Response policy.</p> <p>2) All penalties are commensurate with the violation, based on a consistent penalty policy.</p> <p>3) All final formal enforcement actions specify activities the owner/operator must carry out and dates by which activities must be completed, and require the handler to certify compliance or contain other means of verification.</p> <p>4) All final orders, including Consent Agreements/Final Orders, must express what "compliance" entails and should either specify a detailed technical remedy or require the owner/operator to develop plans that specify details of the remedy.</p> <p>(Civil and criminal actions are considered appropriate actions.)</p>	<p>4) Date of referral decision</p> <p>5) Date of referral</p> <p>6) Date of filing</p> <p>C.</p> <p>1) Yes/No</p> <p>2) Yes/No</p> <p>3) Yes/No</p> <p>4) Yes/No</p>

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\* See footnote 2 on previous page.

KEY QUESTIONS

5. Are Federal facilities dealt with in accordance with timely and appropriate response policy?

OVERSIGHT TOOLS

- o Compliance Monitoring and Enforcement Log (HWIMS)
- o SPMS

6. Are enforcement actions reported to the public or to the regulated community to promote compliance?

OVERSIGHT TOOLS

- o Program reviews

7. Does responsible agency monitor the Class I compliance rate of inspected handlers? (See description and compliance formulas in Appendix B.)

OVERSIGHT TOOLS

- o Compliance Monitoring and Enforcement Log (HWIMS)

PERFORMANCE EXPECTATIONS

- A. To the extent allowed under State and Federal law, Federal facilities should be treated the same as any other violator by both EPA and the States.

- A. Compliance strategy includes procedures for publicizing precedent-setting or other important actions/violations.

- B. Actions/violations are publicized in accordance with the compliance strategy.

- A. The responsible agency establishes the percent of handlers having Class I violations at the beginning of the fiscal year which were brought into compliance or are on a compliance schedule each quarter.

- B. The responsible agency establishes the percent of handlers inspected (or who have had record reviews) which are found to have Class I violations. This is done on a quarterly basis.

PERFORMANCE MEASUREMENT

A. Yes/No

A. Yes/No

B. Yes/No

A. Yes/No

B. Yes/No

## PERMIT PROGRAM CRITERIA

**GOAL:**      **USE THE PERMIT PROCESS TO INCREASE REGULATORY CONTROL  
OF TSDFs TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT**

<u>KEY QUESTIONS</u>	<u>PERFORMANCE EXPECTATIONS</u>	<u>PERFORMANCE MEASUREMENTS</u>
1. Are Federal and State permitting responsibilities coordinated where those responsibilities are shared?	<p>A. There is a signed MOA or other agreement that:</p> <ul style="list-style-type: none"> <li>-- clearly delineates responsibilities for permit processing;</li> <li>-- reflects priorities for permit processing established in annual guidance.</li> </ul>	A. Yes/No
<p><u>OVERSIGHT TOOLS</u></p> <ul style="list-style-type: none"> <li>o MOA</li> <li>o State grant</li> <li>o Joint permitting agreement</li> <li>o Program reviews</li> </ul>	B. EPA and State meet agreed upon commitments for permit processing and issuance.	B. Yes/No (HQ review)
2. Is the permitting authority processing permits in accordance with established procedures?	<p>A. Internal decision schedules are established and tracked for individual permits for:</p> <ul style="list-style-type: none"> <li>-- the receipt of the application,</li> <li>-- completeness check,</li> <li>-- notice of deficiency,</li> <li>-- completeness determination,</li> <li>-- public notice of draft permit,</li> <li>-- end of the public comment period, and</li> <li>-- final decision on permit.</li> </ul>	A. Yes/No
<p><u>OVERSIGHT TOOLS</u></p> <ul style="list-style-type: none"> <li>o Monthly Permit Status Report (HWIMS)</li> <li>o Status of Permit Applications Report (HWIMS)</li> <li>o Program reviews</li> </ul>	<p>B. Permitting authority uses full range of regulatory powers to obtain adequate ground-water systems and data.</p>	B. Yes/No
	<p>C. If permit deficiencies are not resolved within 60 days of Notice of Deficiency (NOD), referral is made for enforcement action* or permit denial is initiated, as appropriate (unless an alternative schedule is agreed upon).</p>	<p>C. Date of completeness determination Date of NOD Date of permit denial Date of closure plan submission Date of NOD with formal action or referral</p>

\* See "Late and Incomplete Part B Policy" dated September 9, 1983, and the "Compliance Order Guidance" dated August 1985.



KEY QUESTIONS	PERFORMANCE EXPECTATIONS	PERFORMANCE MEASUREMENTS
3. Are permit determinations consistent with permit regulations?	<p>A. Lead permitting authority makes permit determinations that are consistent with the authorized State and/or Federal program.</p> <p>B. Conditions that are based upon permit writers' technical judgment/interpretation are consistent with the intent of the regulations regarding level of control, containment, cleanup, or protection.</p> <p>C. Comments arising from permit reviews by oversight agency are resolved before the next stage of permit processing is completed.</p> <p>D. Permit determinations are upheld on technical, legal, and procedural grounds.</p> <p>E. Permit conditions are enforceable.</p> <p>F. Permit conditions are clear, understandable, and properly documented (through application or administrative record).</p> <p>G. Permit fully describes and defines requirements and frequencies for facility monitoring, reporting, inspection, and analyses after permit issuance.</p>	<p>A. Yes/No</p> <p>B. Yes/No</p> <p>C. Yes/No</p> <p>D. Yes/No</p> <p>E. Yes/No</p> <p>F. Yes/No</p> <p>G. Yes/No</p>
<p><u>OVERSIGHT TOOLS</u></p> <ul style="list-style-type: none"> <li>o Review of draft and final permits</li> <li>o Permit/files</li> <li>o Administrative Record</li> <li>o NOD reviews</li> <li>o Program reviews</li> </ul>		
4. Is the responsibility for managing public involvement activities clearly identified?	<p>A. EPA and States have selected a public involvement coordinator.</p> <p>B. EPA and States communicate on a regular basis to ensure coordination of public involvement activities.</p>	<p>A. Yes/No</p> <p>B. Yes/No</p>
<p><u>OVERSIGHT TOOLS</u></p> <ul style="list-style-type: none"> <li>o Program reviews</li> </ul>		

<u>KEY QUESTIONS</u>	<u>PERFORMANCE EXPECTATIONS</u>	<u>PERFORMANCE MEASUREMENTS</u>
<p>5. Are the public involvement plans (PIP) implemented in accordance with national policy?</p> <p><u>OVERSIGHT TOOLS</u></p> <ul style="list-style-type: none"> <li>o Program reviews</li> <li>o Permit files</li> <li>o Public Involvement Plans</li> </ul>	<p>A. National policy* for selecting facilities for expanded public participation is followed. At a minimum, selection should focus on:</p> <ul style="list-style-type: none"> <li>-- commercial facilities</li> <li>-- new facilities</li> <li>-- high public interest facilities</li> </ul> <p>B. Public involvement plans are prepared and implemented in accordance with national policy.</p> <p>C. Public involvement activities are well integrated into the permit program and FMP development.</p>	<p>A. Yes/No</p> <p>B. Yes/No</p> <p>C. Yes/No</p>
<p>6. Are public concerns/comments taken into account during decision making?</p> <p><u>OVERSIGHT TOOLS</u></p> <ul style="list-style-type: none"> <li>o Final permit decision</li> <li>o Public comments</li> </ul>	<p>A. Final permit decisions consider all relevant public comment on draft permit.</p>	<p>A. Yes/No</p>

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\* See revised National Permits Strategy and "Guidance on Public Involvement in RCRA Permitting" dated January 1986.

## CLOSURE PROGRAM CRITERIA

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GOAL: ASSURE CLOSURES ARE IMPLEMENTED IN A MANNER PROTECTIVE OF HUMAN HEALTH AND THE ENVIRONMENT.

KEY QUESTIONS

1. Are EPA/States reviewing closure plans in accordance with statutory and regulatory requirements?

OVERSIGHT TOOLS

- o Program reviews
- o Reviews of Administrative Records

2. Are the approved plans consistent with the technical closure requirements?

OVERSIGHT TOOLS

- o Program reviews
- o Reviews of Administrative Records

PERFORMANCE EXPECTATIONS

- A. Closure/post-closure plan deficiencies are resolved or the plan is modified within regulatory timeframes.
- B. Closure decisions are based on adequate soil and ground-water monitoring information, where applicable.
- C. Cost-estimates are reviewed to determine whether they accurately reflect costs of completing closure and financial assurance instruments are sufficient to cover cost-estimates.
- D. EPA/States review closure certifications prior to release of owner/operator's financial assurance.
- E. EPA/States assure that notices in the deed are recorded in accordance with regulatory requirements.
- F. EPA and States follow all statutory and regulatory requirements for public participation.

PERFORMANCE MEASUREMENTS

- A. Date of notification of intent to close  
Date of public notice of intent to approve

B. Yes/No

C. Yes/No

D. Yes/No

E. Yes/No

F. Yes/No

A. Yes/No

B. Yes/No

C. Yes/No

KEY QUESTIONSPERFORMANCE EXPECTATIONSPERFORMANCE MEASUREMENTS

3. Do EPA/States oversee closures to ensure those actions are consistent with approved plans?

- A. EPA/States conduct adequate inspections to ensure that hazardous waste units are closing in accordance with approved closure/post-closure plans.

- A. No. of notifications of closure  
No. of closure plans approved  
No. of closing facilities inspected

OVERSIGHT TOOLS

- o Program reviews
- o Reviews of Administrative Records
- o CMEL
- o SPAR

4. Are the Regions/States coordinating closure activities with corrective action?

- A. EPA/States are assessing the need for corrective action at closing facilities.

- A. % of closing facilities receiving a RCRA Facility Assessment (RFA)

- B. Based on this assessment, EPA/States are integrating corrective action into the closure process through the closure plan, a post-closure permit, or an administrative complaint/order.

- B. No. of closing facilities at which corrective action is deemed necessary  
No. of closing facilities for which corrective action is addressed in closure plans, post-closure permits, or compliance orders

OVERSIGHT TOOLS

- o Program reviews
- o SPAR

## CORRECTIVE ACTION PROGRAM CRITERIA

**GOAL:** TO CLEAN UP RELEASES FROM ALL WASTE MANAGEMENT UNITS THAT THREATEN PUBLIC HEALTH OR THE ENVIRONMENT AND TO MINIMIZE THE THREAT OF CONTINUING RELEASES IN THE FUTURE.

KEY QUESTIONS	PERFORMANCE EXPECTATIONS	PERFORMANCE MEASUREMENTS
<p>1. Are RCRA Facility Assessments (RFAs) and Remedial Investigations (RIs) conducted in a technically adequate manner?</p>	<p>A. RFAs and RIs examine all relevant information, in accordance with the following: draft RSI on continuing releases (dated 1/30/85), codification rule promulgated 7/15/85, draft RFA Guidance (dated 6/86), and 40 CFR Part 270.</p>	<p>A. Yes/No</p>
<p><u>OVERSIGHT TOOLS</u></p>		
<ul style="list-style-type: none"> <li>o Program reviews</li> <li>o File reviews</li> </ul>	<p>B. Where appropriate, investigations and remedies consider the use of authorities other than RCRA (i.e., CERCLA, TSCA, or other State authorities) to secure corrective action.</p>	<p>B. Yes/No</p>
	<p>C. RFAs and RIs identify and evaluate all SWMUs and all known/likely releases at a facility.</p>	<p>C. No. of releases identified No. of releases evaluated</p>
	<p>D. Determinations regarding releases are made using appropriate on-site inspection or comparable information.</p>	<p>D. Yes/No</p>
	<p>E. At the conclusion of any RFA conducted, the need for a remedial investigation, interim measures, or corrective actions is determined.</p>	<p>E. Yes/No</p>
	<p>F. RFA reports provide adequate documentation to support specific permit or compliance order conditions.</p>	<p>F. Yes/No</p>
	<p>G. EPA/State identify and respond expeditiously to situations requiring immediate corrective measures.</p>	<p>G. Yes/No</p>

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KEY QUESTIONS	PERFORMANCE EXPECTATIONS	PERFORMANCE MEASUREMENTS
Question 1 (continued)	<p>H. RI work plans for releases are reviewed and approved to ensure that they contain schedules of compliance that are enforceable.</p> <p>I. EPA/States monitor approved RI workplans and sampling plans for releases in accordance with the Draft RCRA RI Guidance for Continuing Releases at RCRA Facilities (6/86).</p>	<p>H. Yes/No</p> <p>I. Yes/No</p>
2. Are remedies adequate to protect human health and the environment?	<p>A. EPA/States review and approve or require modifications to proposed corrective measures.</p> <p>B. Appropriate interim measures are taken as necessary to prevent releases or additional contamination, to prevent or reduce the further spread of contamination, or to address an exposure threat that a release presents.</p> <p>C. EPA/States ensure that sufficient financial assurance is provided by the owner/operator for implementing corrective measures.</p> <p>D. Corrective action plans are specific and contain schedules of compliance that are enforceable.</p> <p>E. EPA/States have established procedures to ensure that owner/operators implement corrective measures in accordance with the plans.</p> <p>F. EPA/States ensure that corrective action plans include mechanisms for measuring the effectiveness of the corrective action.</p>	<p>A. Yes/No</p> <p>B. Yes/No</p> <p>C. Yes/No</p> <p>D. Yes/No</p> <p>E. Yes/No</p> <p>F. Yes/No</p>

OVERSIGHT TOOLS

- o Program reviews
- o File reviews

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<u>KEY QUESTIONS</u>	<u>PERFORMANCE EXPECTATIONS</u>	<u>PERFORMANCE MEASUREMENTS</u>
3. Are there procedures for ensuring effective coordination?	A. EPA/States assign lead responsibility (between permitting and enforcement) for managing the corrective action program.	A. Yes/No
<u>OVERSIGHT TOOLS</u>	B. Decisions on RCRA corrective action activities take into account other activities relevant to corrective action (CERCLA, State Water Agencies, local authorities, etc.)	B. Yes/No
o Program reviews		
o File reviews		

## MANAGEMENT CRITERIA

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GOAL #1: PROVIDE MANAGEMENT SUPPORT THAT FACILITATES ACHIEVEMENT OF PROGRAM GOALS AND SUSTAINS A HIGH QUALITY PROGRAM OVER TIME.

KEY QUESTIONS	PERFORMANCE EXPECTATIONS	PERFORMANCE MEASUREMENTS
1. Are resources used in accordance with the annual State grant and Regional resource allocation?	<p>A. Workyears used for RCRA match workyears allocated.</p> <p>B. Workyears used for each key program element (e.g., enforcement, program development, program management, permitting) match workyears allocated.</p>	<p>A. No. of workyears allocated No. of workyears used</p> <p>B. No. of workyears allocated No. of workyears used</p>
<u>OVERSIGHT TOOLS</u>		
<ul style="list-style-type: none"> <li>o Program reviews</li> <li>o State grant work programs</li> </ul>		
2. Have training needs been identified?	<p>A. EPA and States develop annual workplans that identify specific training needs.</p> <p>B. Training plans are relevant to problems/deficiencies identified during program reviews.</p>	<p>A. Yes/No</p> <p>B. Yes/No</p>
<u>OVERSIGHT TOOLS</u>		
<ul style="list-style-type: none"> <li>o Training plans</li> <li>o State grant work programs</li> </ul>		
3. Has staff training been provided and maintained?	<p>A. EPA and State staff are trained in accordance with the annual training plan.</p> <p>B. EPA and States implement on-going training programs to initiate new employees and to maintain expertise of experienced staff, including but not limited to, the following major subject areas:</p> <ul style="list-style-type: none"> <li>-- inspections &amp; enforcement</li> <li>-- ground-water monitoring</li> <li>-- corrective action</li> <li>-- closure plan approval</li> <li>-- Part B reviews</li> <li>-- post-closure permits.</li> </ul>	<p>A. Yes/No</p> <p>B. No. of hours of training by subject area</p>
<u>OVERSIGHT TOOLS</u>		
<ul style="list-style-type: none"> <li>o Program reviews</li> <li>o Training plan</li> <li>o State grant work programs</li> </ul>		



KEY QUESTIONS

4. Is an information system in place that effectively supports program management?

OVERSIGHT TOOLS

- o Program reviews
- o Report formats
- o MOA
- o State grant work programs
- o HWIMS

5. Is there a process to ensure data quality?

OVERSIGHT TOOLS

- o Program reviews
- o Database audits

6. Is the State continuing to operate an equivalent Federal program?

OVERSIGHT TOOLS

- o Program reviews
- o MOA

PERFORMANCE EXPECTATIONS

- A. Information system has the following features:

1) Data system (automated or manual) tracks key program elements and provides data to meet EPA and State reporting requirements.

2) Data base accurately identifies regulated community covered by the authorized program.

3) Management tracking system provides up-to-date and accurate permit, inspection, compliance, enforcement, closure, and corrective action status information.

- B. States provide information on facility status changes (e.g., notification, Part A) to EPA at least monthly.

A. EPA and States use consistent definitions for reporting data.

B. EPA and States exercise quality control over data input and retrieval.

C. EPA and States select a lead person responsible for data quality.

A. State informs EPA in advance of potential waivers, variances, changes to State statutes and regulations, etc., in accordance with MOA.

B. State adequately addresses EPA comments on waivers, delistings, variances, and regulation changes.

C. Authorized State adopts changes made in Federal requirements within the specified time period.

PERFORMANCE MEASUREMENTS

A.

1) Yes/No

2) Yes/No

3) Yes/No

B. Yes/No

A. Yes/No

B. Yes/No

C. Yes/No

A. Yes/No

B. Yes/No

C. Date Federal change made  
Date State adopts change

GOAL #2: PROVIDE EFFECTIVE OVERSIGHT TO ENSURE ACHIEVEMENT OF PROGRAM GOALS

KEY QUESTIONS	PERFORMANCE EXPECTATIONS	PERFORMANCE MEASUREMENTS
<p>1. Are the Regions administering State hazardous waste grants in accordance with grant regulations (Part 35 Subpart A)?</p> <p><u>OVERSIGHT TOOLS</u></p> <ul style="list-style-type: none"> <li>o Program reviews</li> <li>o Regional grants guidance</li> <li>o State grant work programs</li> </ul>	<p>A. Regional program guidance to each State contains EPA's national objectives and priorities, the State's funding allocations, the program elements EPA uses for budget justification and management outputs and special conditions or limitations relevant to the State.</p> <p>B. Regions provide program guidance to States at least 60 days prior to final application deadline.</p> <p>C. All complete applications are approved, conditionally approved, or disapproved by the beginning of fiscal year.</p>	<p>A. Yes/No</p> <p>B. Date final guidance is received Date of application deadline</p> <p>C. Date complete application is received Date of approval, conditional approval, or disapproval</p>
<p>2. Are HQ and Regional oversight activities resulting in an improved RCRA program?</p> <p><u>OVERSIGHT TOOLS</u></p> <ul style="list-style-type: none"> <li>o Program reviews</li> <li>o Review of mid- and end-of-year procedures/ reports</li> <li>o Analysis of monthly reports and other submissions</li> </ul>	<p>A. Regions conduct State file and program reviews according to schedules specified in grant or other agreement.</p> <p>B. Reviews address the key questions and performance measures specified in this policy.</p> <p>C. Review findings are provided to the State within 45 days of conducting the review. If the evaluation reveals problem areas, negotiations are conducted to reach an agreement for resolving them.</p> <p>D. EPA and State take action to resolve problems, including providing technical assistance or direct EPA action, in accordance with negotiated agreements.</p>	<p>A. Yes/No</p> <p>B. Yes/No</p> <p>C. Date of review Date State receives comments</p> <p>D. Yes/No</p>

<u>KEY QUESTIONS</u>	<u>PERFORMANCE EXPECTATIONS</u>	<u>PERFORMANCE MEASUREMENTS</u>
Question 2 (Continued)	E. EPA performs oversight inspections in accordance with MOA, annual State work programs, and other agreements.	E. Yes/No
	F. EPA completes and transmits oversight inspection reports to the State within 30 days of inspection; or, where inspections are conducted jointly, EPA transmits oversight report within 30 days of receiving State's inspection report.	F. Date of inspection Date report transmitted to State
	G. EPA reviews and comments on permits and closure plans agreed upon by the Region and State. Comments include a statement of the reason for the comment and the actions the State should take.	G. Yes/No
3. Does EPA provide guidance and assistance to strengthen program implementation capabilities?	A. EPA and States identify guidance and technical assistance needs.	A. Yes/No
	B. EPA provides guidance with sufficient lead time for use and clearly indicates how and when guidance is to be used.	B. Yes/No
<u>OVERSIGHT TOOLS</u>	C. Where State performance is dependent on agreed upon technical assistance, judgments of State performance will take into account failure to provide such assistance.	C. Yes/No
o State grant work programs		
o Program reviews		

**GOAL #3: USE A FACILITY MANAGEMENT PLANNING PROCESS TO ENHANCE COORDINATION BETWEEN PERMITTING AND ENFORCEMENT TO MAXIMIZE COMPLIANCE WITH THE RCRA REQUIREMENTS**

<u>KEY QUESTIONS</u>	<u>PERFORMANCE EXPECTATIONS</u>	<u>PERFORMANCE MEASUREMENTS</u>
1. Are facility management plans (FMPs) developed and updated in accordance with the Draft Guidance for Facility Management Planning (7/85)?	<p>A. EPA and States periodically review relevant information to determine environmentally significant facilities.</p> <p>B. Facility management planning is done for each environmentally significant facility. The planning process identifies specific problems at the facility, the appropriate tools to be used (e.g., enforcement, permitting), the responsible State/Federal organization, and a schedule for taking action that meets statutory deadlines, as appropriate.</p> <p>C. Where permitting and enforcement functions are separate, the development of FMPs and multi-year strategies are coordinated internally.</p> <p>D. An EPA facility manager has been designated for each facility.</p> <p>E. FMPs include current commitments and out-year expectations and are updated as necessary.</p>	<p>A. Yes/No</p> <p>B. Yes/No</p> <p>C. Yes/No</p> <p>D. Yes/No</p> <p>E. Yes/No</p>
<u>OVERSIGHT TOOLS</u>		
<ul style="list-style-type: none"> <li>o Program reviews</li> <li>o State grant work programs</li> </ul>		
2. Is there a process for identifying potential releases and establishing priorities for further investigations/corrective action?	<p>A. EPA/States have established a process for reviewing and screening available information (e.g., SMU responses, inspection reports, Part B applications, RFAs, etc.) to identify potential releases at all RCRA facilities.</p> <p>B. EPA/States use the established process to develop corrective action schedules and priorities for environmentally significant facilities.</p>	<p>A. Yes/No</p> <p>B. Yes/No</p>
<u>OVERSIGHT TOOLS</u>		
<ul style="list-style-type: none"> <li>o Program reviews</li> <li>o File reviews</li> </ul>		

KEY QUESTIONSPERFORMANCE EXPECTATIONSPERFORMANCE MEASUREMENTS

3. Is there a multi-year strategy that addresses how the responsible authority(ies) plan to permit and/or bring all TSDFs into compliance with applicable regulations?

OVERSIGHT TOOLS

- o Program reviews
- o State grant work program

- A. The strategy summarizes the schedule of activities for environmentally significant facilities and schedules final determinations for non-environmentally significant facilities.
- B. These schedules take into account the need to set priorities for corrective action, permitting, and closure activities.
- C. The strategy is updated annually.

A. Yes/No

B. Yes/No

C. Yes/No

4. Is the multi-year strategy being implemented to manage the RCRA program to achieve priority objectives?

OVERSIGHT TOOLS

- o Compliance Monitoring and Enforcement Log (HWLMS)
- o Monthly Permit Status Report
- o State grant work program
- o Program reviews
- o MOA

- A. Multi-year strategies are used as a management tool to coordinate and implement scheduled permit and enforcement actions, including corrective action and closures for environmentally significant facilities, as well as non-environmentally significant facilities.
- B. Final determinations are made at facilities in accordance with the multi-year strategy.

A. Yes/No

B. Projected date for final determinations  
Actual date for final determinations

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## PART III

RESPONSE TO PERFORMANCE AGAINST THE CRITERIA

Part II establishes the criteria for a quality RCRA program and lists the oversight tools and performance measurements most appropriate for tracking progress against each of the criteria. This Part outlines the general principles to use when determining how EPA and the States should respond to performance against the criteria.

The RCRA program quality criteria provide national expectations for program performance. As explained in Part I, all States are expected to follow these criteria except to the extent they are explicitly modified by the Memorandum of Agreement (MOA) or the annual grant work program. Regional and State performance relative to the Criteria will be formally reviewed at least once a year.

General Principles for Response Actions

The appropriate response to performance against the criteria will depend on a number of conditions, including:

- ° the relative importance of the criteria to program objectives;
- ° the seriousness of the failure to meet the criteria;
- ° the frequency of failure;
- ° the number of criteria failed; and,
- ° the past response to corrective action.

Certain situations demand a nationally consistent response. However, most situations require a response based on what will work for the individual Region and State, reflecting the general principles outlined here and in the Agency's Performance-Based Grants Policy. Therefore, the response action will be tailored to the needs of the situation, recognizing that the principal goal is to strengthen the credibility, capability, and performance of the implementing agency.

The level and severity of the response action should be consistent for similar performance problems, whether the lead Agency is the EPA Region or the State. However, the available range of EPA response actions differs depending on whether the Region or the State is the lead agency. Oversight in an authorized State is based on the MOA, annual grant work program, or other State-EPA agreement, and response actions are to be in accord with Agency policies. Response actions where the Region is the lead agency are based on performance tracking and evaluations and personnel performance standards.

Oversight in Authorized States

Where the authorized State is the lead agency, the Region is responsible for developing a consistent oversight approach that provides a rational mix of incentives and sanctions for performance against the criteria. This approach must be delineated clearly in the Memorandum of Agreement or other Regional-State agreements so that response actions are both predictable and effective.

Where the State consistently meets the performance criteria, the Regional Office will reduce the degree of oversight to levels appropriate to the need for that State. For example, if the State's inspections follow the established procedures and are always thorough and well documented, the Region may reduce the number of oversight inspections. Additionally, where performance has been demonstrated to be of consistently high quality, the Region may reduce the frequency and scope of performance reviews.

Where the State fails to meet the performance criteria, the Regional Office will initiate corrective action. The primary emphasis of corrective action will be on meeting the enforcement, permits, closure, and corrective action criteria and maintaining an equivalent program. Where a State has problems meeting those criteria, the Region will take a more rigorous look at how the State is handling certain of the management criteria, such as effective use of resources and training of staff.

In some cases, failure to meet the criteria will trigger a direct EPA action. This is particularly true in the enforcement area, where EPA has the authority under §3008(a)(2) to bring Federal enforcement action if the State action is not timely or appropriate. The criteria in Part II define "timely and appropriate" and establish a system of escalating enforcement actions based on the seriousness of the violation (e.g., Class I violations) and the available authorities (e.g., administrative penalty authority). Lack of conformance to these criteria will trigger EPA involvement.

EPA may also take direct action in response to State-prepared permits that are inconsistent with the authorized State permit regulations. EPA will prepare comments in writing to the State for all permits designated for EPA review through the specific Regional/State Memorandum of Agreement. Based on 40 CFR §271.19, comments reflecting requirements of the authorized State program are enforceable by EPA, even if not included in the final State-issued permit.

For the remainder of the criteria, the response will depend on the pattern of the performance evaluated through program monitoring and the mid- and end-of-year reviews. Where failure to meet a criterion has a minor impact on the overall quality of the State's program, the Regional Office may slightly increase oversight or urge the State to modify a procedure. Where a State consistently fails selected criteria and shows little intent to correct the situation, stronger actions are called for. This should include award of conditional grants and quarterly or semi-annual release of the funds, directly linked to performance. Listed below in roughly ascending order are examples of responses to failure to meet the criteria. These responses are not mutually exclusive.

- ° Suggest a minor change to State or Regional procedures (e.g., a change to filing procedures to improve availability of enforcement information.)

- ° Provide technical assistance (e.g., provide training on drafting groundwater corrective action provisions to State permit writers).
- ° Slightly increase oversight (e.g., where file reviews indicate inspection checklists are not being properly completed, increased number of oversight inspections or file reviews may be appropriate).
- ° Raise performance issues to higher level of management both at the Region and State (e.g., include as agenda item on routine RA/State Director meetings).
- ° Revise future work program (e.g., add additional grant conditions requiring program management changes designed to correct problems with meeting performance criteria).
- ° Greatly increase oversight (e.g., overview more permits where State consistently drafts permits not in accord with state regulations).
- ° Award conditional grants or revoke a State's letter of credit (e.g., where States consistently fail to take timely enforcement actions, future grant awards should be tied to improved performance).

Consistent with the Policy on Performance-Based Assistance (May 31, 1985), EPA will award conditional grants and release them on a quarterly or semiannual basis, where a consistent pattern of problems has developed for an individual State. Release of subsequent increments should be conditioned on correcting performance deficiencies.

Where a State consistently fails to follow through on the corrective actions agreed upon, or the State's legal authorities are no longer equivalent, EPA may initiate withdrawal of the State's authorization. The criteria for withdrawal of the program are outlined in 40 CFR §271.22.

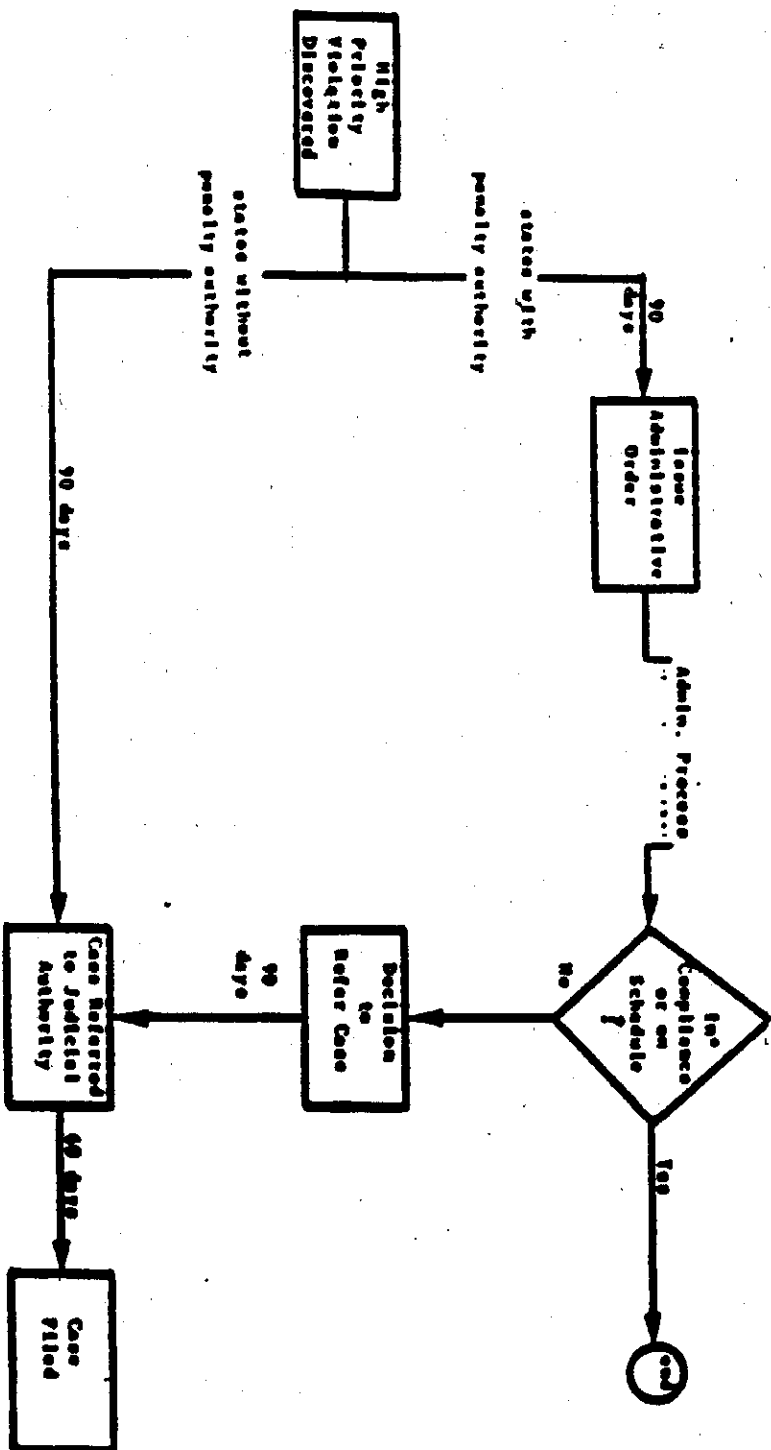
#### Oversight of Regional Office

Where the EPA Region has responsibility for a portion or all of the hazardous waste program because the State is not authorized, the Region must meet the performance criteria listed in Part II and follow the general principles on Regional actions outlined in this Part. The Regional performance standards against which Regional job performance is measured should reflect the Part II criteria. The annual program reviews conducted by Headquarters in each Region will address the criteria, and Headquarters may increase or decrease Regional oversight based on Regional performance.

In summary, these criteria form the basis for a dynamic evaluation process. They establish goals toward which the implementing agency, either the Regional Office or an authorized State, must work. Evaluations of Regional and State programs should identify strengths, such as areas of effective implementation, as well as problems, such as training needs. EPA then can focus its assistance efforts on disseminating effective implementation strategies and on resolving problem areas.



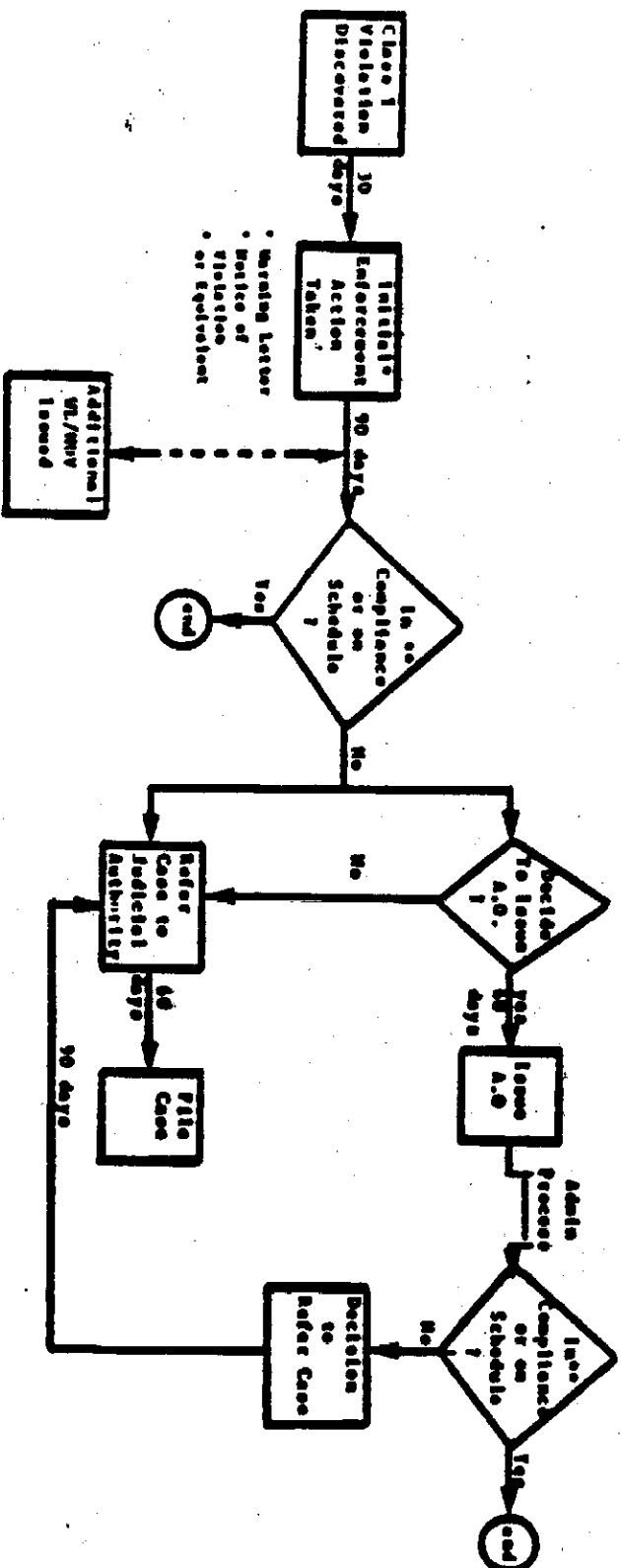
# TIMELINE FOR ENFORCEMENT ACTIONS HIGH PRIORITY VIOLATIONS



• Handlers on a compliance schedule will be monitored to ensure conformance with the schedule. Escalated enforcement actions will be taken if a handler is not in compliance within 30 days of the compliance schedule date.

Time required for administrative processing is in addition to the days indicated on the timeline. Pre-hearing negotiations should not generally continue beyond 90 days from issuance of an Initial Administrative Order.

# TIMELINE FOR ENFORCEMENT ACTIONS CLASS I VIOLATIONS



- If the Region or State chooses to issue an Administrative Order (AO) or refer the case immediately instead of taking these formal action, then the timeline for High Priority Violation should be followed.
- Handlers on a compliance schedule will be monitored to ensure conformance with the schedule. Expedited enforcement actions will be taken if a handler is not in compliance within 30 days of the compliance schedule date.
- Time required for administrative processing is in addition to the days indicated on the timeline. Pre-hearing negotiations should not generally continue beyond 90 days from issuance of an Initial Administrative Order.

Before to an optional action.

INTRODUCTION

EPA will use two types of formulas to track compliance. The first compliance formula tracks the progress of a fixed universe of handlers returning to compliance over time. The purpose of this formula is to track the Regions' and States' success in bringing handlers with Class I violations into compliance.

The second compliance formula tracks the percentage of handlers with Class I violations at the beginning and middle of the fiscal year. The purpose of this formula is to take a snapshot of the compliance rate at a point in time.

These formulas will be applied to handlers with all types of Class I violations, as well as to handlers with particular types of Class I violations, e.g., ground-water monitoring or closure/post-closure violations.

COMPLIANCE FORMULA A - PROGRESS OF HANDLERS RETURNING TO COMPLIANCE

At any point in time, handlers found to have Class I violations fall into one of three categories:

1. returned to compliance;
2. on a compliance schedule and meeting scheduled milestones; or
3. behind the compliance schedule or not yet on a schedule.

Compliance Formula A is designed to show the movement of a fixed universe of handlers with Class I violations from Categories 2 and 3 into Category 1. EPA will use the compliance formulas to compute the percentage of handlers in each of these categories each quarter. (Handlers with new violations discovered each quarter will represent a new universe and will be tracked separately.) Table I illustrates these formulas.

TABLE I - COMPLIANCE FORMULA ACOMPLIANCE FORMULA A1 -- HANDLERS RETURNED TO COMPLIANCE

<u>Handlers in Compliance on December 31</u>	<u>Handlers in Compliance on March 31</u>	<u>Handlers in Compliance on June 30</u>	<u>Handlers in Compliance on September 30</u>
<u>Handlers with Class I Violations on October 1</u>	<u>Handlers with Class I Violations on October 1</u>	<u>Handlers with Class I Violations on October 1</u>	<u>Handlers with Class I Violations on October 1 of Previous Year</u>

COMPLIANCE FORMULA A2 -- HANDLERS ON COMPLIANCE SCHEDULES

<u>Handlers on Schedule on December 31</u>	<u>Handlers on Schedule on March 31</u>	<u>Handlers on Schedule on June 30</u>	<u>Handlers on Schedule on September 30</u>
<u>Handlers with Class I Violations on October 1</u>	<u>Handlers with Class I Violations on October 1</u>	<u>Handlers with Class I Violations on October 1</u>	<u>Handlers with Class I Violations on October 1 of Previous Year</u>

COMPLIANCE FORMULA A3 -- HANDLERS BEHIND SCHEDULE/ON NO SCHEDULE

<u>Handlers Behind Schedule /No Schedule on Dec. 31</u>	<u>Handlers Behind Schedule /No Schedule on Mar 31</u>	<u>Handlers Behind Schedule /No Schedule on Jun 30</u>	<u>Handlers Behind Schedule /No Schedule on Jun 30</u>
<u>Handlers with Class I Violations on October 1</u>	<u>Handlers with Class I Violations on October 1</u>	<u>Handlers with Class I Violations on October 1</u>	<u>Handlers with Class I Violations on October 1 Of Previous Year</u>

Table II below is an example of the application of Compliance Formula A. This example illustrates tracking for only one universe of handlers, a group of 150 handlers out of compliance on October 1, 19XX.

TABLE II - EXAMPLE OF FORMULA A

<u>Category</u>	<u>Dec.31</u>	<u>Mar.31</u>	<u>Jun 30</u>	<u>Sep 30</u>
Returned to compliance (Compliance Formula A1)	20%	30%	40%	50%
On schedule (Compliance Formula A2)	50%	30%	20%	40%
No schedule or behind schedule (Compliance Formula A3)	30%	40%	50%	10%
TOTAL	100%	100%	100%	100%

In this example, by the end of the first quarter, 30 of the 150 handlers (20%) have returned to compliance, 75 (50%) are on schedules to achieve compliance, and 45 (30%) either do not have a schedule yet or are behind schedule.

By the end of the second quarter, 15 more of the 150 handlers have reached compliance for a total of 45 (or 30%) handlers in compliance. Forty-five handlers (30%) are on schedule to reach compliance and 60 (40%) are either behind schedule or do not have a schedule.

The value of this type of tracking system is that one can follow the progress of a fixed universe of handlers over time until all come into compliance.

#### COMPLIANCE FORMULA B - COMPLIANCE RATE AT A POINT IN TIME

The second formula will take a "snapshot" of handlers with Class I violations at the middle (March 31) and at the end (September 30) of each fiscal year. The formula looks at all handlers out of compliance on those dates as a factor of the number of handlers that have been evaluated. To compute the total number of handlers out of compliance, sum the number of handlers on a compliance schedule, behind schedule, or on no schedule for all violators. The number of handlers evaluated includes all handlers that have received inspections and/or record reviews. Table III below illustrates Compliance Formula B.

TABLE III -- COMPLIANCE FORMULA B AND EXAMPLE

<u>Handlers with Class I Violations on March 31</u>			<u>Handlers with Class I Violations on Sept. 30</u>
<u>Total Number of Handlers Evaluated</u>			<u>Total Number of Handlers Evaluated</u>
Handlers with Class I Violations:	<u>Mar 31</u>		<u>Sept 30</u>
On compliance schedule (Formula A2)	1000		1370
Behind schedule/no schedule (Formula A3)	<u>500</u>		<u>1150</u>
	1500		2520
Total Number of Handlers Evaluated to Date	3000		4500
Percent in Compliance	50%		44%

In this example, of the 3,000 handlers evaluated as of March 31, 1,500 have Class I violations. The compliance rate is 50%. As the State inspects more handlers, completes more record reviews, and conducts more in-depth inspections, they find more Class I violations. As of September 30, of the 4,500 handlers evaluated, 2,520 have Class I violations. The compliance rate decreases to 44%.

The change in the compliance rate from one period to another must be analyzed on a case-by-case basis to properly interpret the situation. A decrease in the compliance rate does not necessarily mean that a State's performance is becoming less effective. In fact, it may mean that a State's performance is improving. The State may be finding more Class I violations because they are looking at handlers more closely. On the other hand, a decreasing trend in the compliance rate may mean that the State is finding violations, but not taking timely and appropriate enforcement actions to bring handlers into compliance. Because of this, EPA will not use this compliance rate alone to judge a State program, but will base its judgment of the quality of the program on the overall State program.